and the agents of Bukit Rajah Estate concerning the unexpired period of life expectancy, we accept the figure of 13 years given by the estate's agents as the most acceptable of the three as they should have accurate and personal knowledge of the economic tapping life of the trees than the other two witnesses. With regard to the average annual yield per acre, we are of the opinion that as all the figures given by the government valuer, Mr. Carter and the agents (the agents in their statement quote the yield for 1964 at the estimated figure of 965 lbs. which they explained in their letter dated 6th November 1964 is the overall figure for the whole estate and not for the particular area acquired) are estimates, in the absence of any positive proof we are inclined to accept the figure of 1,000 lbs. as a reasonable one. As the income is an immediate and assured income, we have given the capitalisation rate at 7½% (remunerative rate). From our calculation (stated below) we have arrived at a figure of $1,992 per acre which represents the existing value of the land acquired.

Existing Use Value.

Estimated production, 1,000 lbs.		
Estimated net profit, 27.72 cts. per lb. = $277.20	(Say) $	277.00
Years purchase for 13 years @ 7½% and 3%	x	7.193
	(Say)	$1,992 00

We are of the opinion that the potential development value of the land acquired at which any calculation may reasonably be based is $7,000 per acre, after having taken the following factors into consideration:—

(a) The comparative figures of sales produced as evidence by both sides cannot be accepted as fully comparable to the land acquired and therefore can only be accepted as a guide to market conditions prevailing at the time of acquisition.

(b) Evidence has shown that the nearest rural development along Meru Road is about 1½ miles from the acquired area.

(c) The acquired land is situated about 700 yards from the main Meru Road and the only access at the time of acquisition was an estate laterite road which is a private road and which may be used on certain conditions and payment of charges for maintenance.

Our calculation is reproduced below. We are of the view that reversion to development use is uncertain, thereby involving a certain amount of risks. Therefore we consider that the reversion should be capitalised at a higher rate of 10%. Further, the period of deferment is, in our opinion, what a prudent purchaser would expect. We have based it at 13 years.

Reversionary Value.

Reversion to development value per acre,	$7,000.00	
Present value of $1 for 13 years @ 10%,	0.29	$2,030.00.

There will therefore be judgment for the applicant and costs. The respondent shall pay interest on the excess sum at the rate of 6% per annum under section 48 of the Act.

Mr. Ong Yeow Kay and Mr. T. R. Marks, Assessors, concur.

Further, I direct that each assessor shall receive a fee of $100 per day for the three days of this hearing.

Judgment for the applicant.

Solicitors: *Shearn, Delamore & Co.*

LAN YOU TIMBER CO. v. UNITED GENERAL INSURANCE CO. LTD.

[O.C.J. (Raja Azlan Shah J.) October 24, 1967]
[K.L. — Civil Suit No. 565 of 1967]

Arbitration — Claim for workmen's compensation — Denial of liability by insurers — Arbitration clause in policy of insurance — Whether court can hear proceedings before arbitration — Arbitration Ordinance, 1952, s. 5.

Workmen's Compensation — Insurance against personal injuries — Arbitration clause — Whether denial of liability amounted to repudiation — Workmen's Compensation Ordinance, 1952, s. 30.

The defendants insured plaintiff's employees against permanent injuries by accident arising out of and in the course of their employment and agreed to indemnify the plaintiffs in the event of their being liable to pay compensation under the Workmen's Compensation Ordinance.

An employee of the plaintiffs was injured, such injury arising out of and in the course of his employment. It was alleged that the said employee was a winch driver at the material time. The plaintiffs were assessed $7,020 as compensation under the Workmen's Compensation Ordinance, and the same was forwarded to the defendants for settlement. The defendants denied liability because they alleged that the injured employee was not covered by their policy as he did not belong to the category of employees covered by the policy. The plaintiffs then filed their writ against the defendants claiming for idemnity; and the defendants took out a summons asking that all further proceedings in this action be stayed under section 5 of the Arbitration Ordinance on the ground that the insurance policy contained a clause providing for arbitration and that an award obtained under it should be a condition precedent to any action against them. The plaintiffs urged that the matter should not be referred to arbitration because the denial of liability by the defendants was tantamount to a repudiation of the policy including the arbitration clause.

Held: under section 5 of the Arbitration Ordinance the court must hold the parties to their contract, provided they submit to arbitration, unless some sufficient reason, adequate in the circumstances, justified its setting aside the terms of the contract and then exercising a discretion in favour of allowing the action to proceed The onus is on the person opposing the stay, in this case the plaintiffs, and they had not shown sufficient reasons why it should not be referred to arbitration.

Cases referred to:—

(1) *Toller* v. *Law Accident Assurance Society Ltd.* [1936] 2 All E.R. 952.

(2) *Jureidini* v. *National British & Irish Millers Insurance Co. Ltd.* [1915] A.C. 499; [1914-15] All E.R. Rep. 325, H.L.

CIVIL SUIT.

Chan Kheng Ying (Miss) for the plaintiffs.

Ooi Boon Leong for the defendants.

Cur. Adv. Vult.

Raja Azlan Shah J.: This is an application by the defendant company for an order that the proceedings in this action be stayed under section 5 of the Arbitration Ordinance 1952.

On 20th November 1964 the defendant company insured the plaintiffs' employees in their employment against personal injuries by accident arising out of and in the course of their employment and agreed to indemnify the plaintiffs in the event of they being liable to pay compensation under the Workmen's Compensation Ordinance 1952.

On 23rd January 1965 an employee of the plaintiffs, who are carrying on the business of timber logging, was injured in the course of and arising out of his employment. It is alleged that the said employee was a winch driver at the material time. The plaintiffs were assessed $7,020 as compensation under the Workmen's Compensation Ordinance 1952, and the same was forwarded to the insurance company for settlement.

The defendant company denied liability because they say that the injured employee was not covered by the said policy as he was not at the material time working in the categories covered by the said policy. They say that at the material time he was employed as a clerk.

The plaintiffs duly filed their writ against the defendant company, claiming for indemnity. On the action being started in that form, the defendant company have taken out a summons asking that all further proceedings in this action be stayed on the ground that the insurance policy contained a clause providing for arbitration and that an award obtained under it should be a condition precedent to any action against them.

What in effect the defendant company say here is this: there is no sufficient reason why the arbitration clause in the policy held by the plaintiffs should not be implemented; it is a clause which appears in a great number of insurance policies; it is part of the contract and no sufficient reason has been established why the case shall not be referred to arbitration. They, however, do not deny that the policy of insurance was in force at the material time and therefore the principle stated in *Toller* v. *Law Accident Assurance Society Ltd.*[1] is not applicable.

The plaintiffs put forward two grounds why the matter should not be referred to arbitration. They first of all say that the denial of liability by the defendant company is tantamount to a repudiation of the policy including the arbitration clause. Secondly, they say that the arbitration clause purports to oust the jurisdiction of the arbitrator under section 30 of the Workmen's Compensation Ordinance and is therefore void and contrary to public policy.

It will be observed that under section 5 of the Arbitration Ordinance it is not a simple matter of discretion to be exercised by the court. In order to exercise the discretion, the court must first of all be satisfied that there is no sufficient reason why the matter should not be referred in accordance with the submission; in other words, the terms of section 5 mean that the court must hold the parties to their contract, provided they submit to arbitration, unless some sufficient reason, adequate in the circumstances, justifies its setting aside the terms of the contract and then exercising a discretion in favour of allowing the action to proceed. It is therefore obvious that the onus is on the person opposing the stay, that is, the present plaintiffs.

In those circumstances, has there been sufficient cause shown to the court for refusing to give effect to the terms of the contract which is the basis of the liability, that arbitration shall precede any legal proceedings?

The matter came before me in chambers and I disallowed the application. It is now pursued in open court for further argument.

The plaintiffs mainly rely on the first ground. It is now stressed on their behalf that by saying that the injured employee was not employed as a winch driver at the material time it follows that they are repudiating the policy in the sense that there was no policy in existence under which the clerk is covered and therefore the principle stated in *Toller's* case is applicable. That is in my view an ingenious way of circumventing the issue. The facts do not justify such proposition. The fact in issue as I see it is whether the injured employee was a winch driver and, if so, is covered by the policy, or whether he was a clerk, in which case he is not covered. The use of the word "repudiation" is somewhat infelicitous as it suffers from a plurality of meanings. It may mean an expressed denial of liability altogether, in the sense that there was no policy in existence at all. Or it may mean a mere contention to dispute liability under the terms of the policy. Where the repudiation belongs to the former class, the plaintiffs are entitled to say on the principles upon which *Jureidini's* case[2] was decided:

> "You cannot impose upon me an arbitration clause as a written submission in a contract which you either say never came into existence or never wholly repudiated".

The latter meaning warrants the application of the arbitration clause. (See *Toller* v. *Law Accident Assurance Society Ltd., supra*). The defendant company relies on the second meaning. They admit the existence of the policy and are relying upon a term of it to escape liability. It is therefore fallacious to contend that the defendant company by denying liability is repudiating the policy including the arbitration clause.

The second ground was not pursued by the plaintiffs at this hearing and I take it has been abandoned. In any event that ground is without merit.

A re-assessment of the matter compels me to the conclusion that the plaintiffs have not shown sufficient reasons why it should not be referred to arbitration.

The application is therefore allowed with costs. The earlier order is set aside.

Application allowed.

Solicitors: *Donaldson & Burkinshaw; Ariffin & Ooi.*

KHO KWANG CHOON v. PHUMAN SINGH

[O.C.J. (Williams J.) October 28, 1967]
[Kuching — Civil Suit No. K. 24 of 1966]

Land Laws — Indefeasibility of title — Registered charge — Memoranda of charge held inadmissible as they were not registered in accordance with s. 3, Moneylenders Ordinance (Sarawak Cap. 114) — Rectification — Land Code (Sarawak Cap. 81), ss. 132, 134, 148 & 151.

In this case the plaintiff claimed a declaration that, certain charges registered against his land were null and void and an order for rectification of the register. In an earlier action it had been held on an application for the sale of the land that inasmuch as the memoranda of charges had not been registered in accordance with section 3 of the Moneylenders Ordinance they were inadmissible in evidence. The defendant counterclaimed for the capital sum and interest secured by the charges or in the alternative for an order that he was entitled to possession or for sale of the land charged.

Held: (1) once an interest is registered the court has no power in the absence of fraud to remove or even order the removal of the name of the proprietor of the interest and therefore in this case the court had no power to order rectification;

(2) a charge and a memorandum of charge are one and the same thing. This means that evidence which was allowed in the circumstances of this case was inadmissible and no remedy can be granted thereon. The defendant cannot therefore succeed in his counterclaim.

Cases referred to:—

(1) *Phuman Singh* v. *Kho Kwang Choon* [1965] 2 M.L.J. 189.

(2) *Bonnard* v. *Dolt* [1906] Ch. 740.

(3) *Cornelius* v. *Phillips* [1917] A.C. 199.

(4) *Chapman* v. *Michaelson* [1909] 1 Ch. 238.

(5) *Cohen* v. *J. Lester Ltd.* [1938] 4 All E.R. 188.

(6) *Sathappa Chettiar* v. *Song Chwee Oon* [1939] M.L.J. 180.

(7) *AR. Ve. Palanisamy Servai* v. *S.V. Lingham* [1954] M.L.J. 145.

(8) *Chong Cho* v. *Lau Kheok Chee* [1957] S.C.R. 117.

(9) *Frazer* v. *Walker* [1967] 1 All E.R. 649.

(10) *Abirami Ammal & Anor.* v. *M.S.M.M. Meyappa Chettiar* [1959] M.L.J. 149.

CIVIL SUIT.

Sahathevan for the plaintiff.

Thomas for the defendant.

Cur. Adv. Vult.

Williams J.: The plaintiff's claim in this instance follows upon a decision in an earlier case, namely that of *Phuman Singh* v. *Kho Kwang Choon* [1] where the same parties were involved. Briefly that case concerned an application for the sale of charged land under section 148 of the Land Code (Cap. 81 of the Laws of Sarawak). No order was made for the sale of the land because the defendant alleged that the plaintiff was a registered moneylender and that inasmuch as the memoranda of charges had not been registered in accordance with section 3 of the Moneylenders Ordinance (Cap. 114 of the Laws of Sarawak) they were inadmissible in evidence. This decision was appealed to the Federal Court. The appeal was dismissed.

It is then following the dismissal of that appeal that the plaintiff now comes before this court seeking the remedies as set out in the statement of claim namely:—

1. A declaration that the Charges Nos. L. 2178/1960, L. 3309/1962, L. 2739/1963 and L. 2740/1963 registered under the provisions of the Land Code (Cap. 81) on the 16th day of June, 1960, 31st August, 1962 and 17th August, 1963, respectively against Kuching Occupation Ticket No. 16727 of 1946 in favour of the defendant, are null and void.
2. An order that the Register of Titles be rectified by deleting the memorial or entry of Charges Nos. L. 2178/1960, L. 3309/1962, L. 2739/1963 and L. 2740/1963 entered on Kuching Occupation Ticket No. 16727 of 1946.
3. An order that the defendant do deliver forthwith the said Kuching Occupation Ticket No. 16727 of 1946 to the plaintiff for rectification by the Registrar of Titles.
4. An order that the Registrar of Titles be directed to make the said rectification forthwith.
5. Costs.
6. Any other relief which the court thinks fit.

The basic facts as set out in paragraphs 1, 2, and 3 of the statement of claim are not in dispute. Indeed, they cannot be. The defen-